

RISE OF THE HATE SPEECH, CONSEQUENCES AND LEGISLATION

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Abstract

*The goal of this research study is to shed light on the present rise in hate speech and its various elements. It provides an illustrated definition of what constitutes hate speech and explains how counter-speech might be utilised to quell such speech. Controlling hate speech has proven to be a challenging task. The anti-hate speech law is contentious since it restricts someone's ability to express themselves freely. The legal system continuously treads a fine line between control and outright prohibition. "But cases of hate speech are nevertheless on the rise despite the introduction of strict legislation. The Law Commission of India pushed for even tighter regulations in 2017 to curb this. In light of the obvious harm that hate speech does, it is vital to look beyond the current framework and uncover best practises that may be employed to address the issue of hate speech in addition to the legal framework."*¹

Keywords: Hate Speech, complimentary speech, Defamation,

Introduction

Today, a wide range of hazardous speech, including annoying, defaming, separating, provocative, and even speech that induces, upholds, or impels savagery, is alluded to as "hate speech." It might actually irritated the harmony and congruity of society. However, more essentially, hate speech can possibly transform into a serious type of hate speech wrongdoing that straightforwardly imperils the casualties' physical and emotional well-being. It palpably affects its casualties, which hinders their capacity to practice their entitlement to free speech and articulation and holds them back from participating in fair cycles and public discussion.

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Statement of Problem

This research paper intends to throw the light between the common grounds where the prevalence of hate speeches in India has to be given relevant importance. This paper provides the reasons for the rise in hate speeches due to various elements and also due to its misuse by political parties.

Objective

This study aims to shed light on the areas in which the prevalence of hate speech in India warrants appropriate consideration. This research paper explains why hate speech has become more prevalent owing to a variety of factors and also because political parties have been misusing it and has become a weapon for majoritarian politics. The effects and consequences of the same have been analyzed deeply.

Review of Literature

1. Pohjonen, M. and Udupa, S., 2017. Extreme speech online: An anthropological critique of hate speech debates. *International Journal of Communication*, 11, p.19.

¹ Pohjonen, M. and Udupa, S., 2017. Extreme speech online: An anthropological critique of hate speech debates. *International Journal of Communication*, 11, p.19.

2. Bhutkar, G., Raghvani, V. and Juikar, S., 2021. User survey about exposure of hate speech among Instagram users in India. *Int. J. Comput. Appl.*, 183(19), pp.24-29.
3. Chetty, N. and Alathur, S., 2018. Hate speech review in the context of online social networks. *Aggression and violent behavior*, 40, pp.108-118.
4. Arun, C. and Nayak, N., 2016. Preliminary findings on online hate speech and the law in India. Berkman Klein Center Research Publication, (2016-19).
5. Yadav, A., 2018. Countering hate speech in India: Looking for answers beyond the Law. *ILI Law Review*, Winter Issue, 2.
6. Narrain, S., 2015. The Harm in Hate Speech Laws: Examining the Origins of Hate Speech Legislation in India. *Sentiment, Politics, Censorship: The State of Hurt*, edited by Rina Ramdev, SD Nambiar and D. Bhattacharya, pp.39-54.
7. Alam, I., Raina, R.L. and Siddiqui, F., 2016. Free vs hate speech on social media: the Indian perspective. *Journal of Information, Communication and Ethics in Society*.
8. Sharma, I., 2019. Contextualising hate speech: a study of India And Malaysia. *Journal of International Studies*, 15, pp.133-144.

Research Methodology

This research work deals with secondary data only. Appropriate references have been made to various prominent journals to provide an effective analysis on the recent increase in number of hate speech cases. The probable causes and solutions after referring to e-journals and other resources have been made which will prove to be an asset for the viewers.

Components of Hate Speech

"Free speech" and "can't stand speech" are here and there utilized contrary to each other. In reality, free speech comes from the idea of correspondence and the vote based drive, while empowering scorn has its underlying foundations in the earliest, most crude sort of tormenting for matchless quality. Since the issue is regulated harassing roused by a craving for selective political power as opposed to a restriction on free articulation, the expression "can't stand speech" is deluding in such manner. Regardless of whether the incitement call for avoidance, it is by the by forceful and trashes regardless of whether it isn't really expected to prompt actual savagery.

Important Supreme Court Judgement

In the 2014 choice of "Pravasi Bhalai Sangathan v. Association of India," the Supreme Court of India made the exact case that the idea of separation lies at the premise of can't stand speech. It does not matter exactly the way that hurtful it is, yet in addition how well and regularly it underestimates a populace: Hate speech is an endeavor to minimize somebody due to their connection with a specific gathering. hate speech intends to bring down the social position and general acknowledgment of gathering individuals by utilizing correspondence that opens the gathering to contempt.

Subsequently, hate speech is constantly imbued with social, political, or majoritarian power. "It makes a popularity-based shortage within the designated local area by endeavoring to drive it out of the nation. Regardless of how they might outrage certain individuals with their manner of speaking, troublemakers and indecent individuals from mathematical minorities or politically minimized networks cannot make a popularity-based shortfall. Thus, the presenters display a misleading relationship."²

"At the point when it concluded that no two comments are relevantly indistinguishable in *Amish Devgan v. Association of India* (2020), the Supreme Court recognized the possibility of setting variety. This happens when a solid gathering utilizes hate speech against a more vulnerable gathering that is as of now the objective of bias, notwithstanding bunch affinities. The effect of hate speech is additionally affected by the speaker.

² Yadav, A., 2018. Countering hate speech in India: Looking for answers beyond the Law. *ILI Law Review*, Winter Issue, 2.

As such, the damage brought about by speech shifts relying upon the observable impacts it has on the planned individual or gathering of people. Regulation of Hate Speech

Every nation has a different definition of "hate speech." Its applicability is determined by the particular environment in which it operates, which was shaped by the interaction of peculiar senses, "identities," and "assessments" under specific conditions. "Talking that has no other goal than to transmit hatred for a particular group, such as a certain race, especially in situations where the communication is likely to provoke violence," according to Black's Law Dictionary, is what is meant by hate speech. Thus, "saying that is generally derogatory towards someone else" might be used to define hate speech.

"A community's ability to mobilize in defence of itself is also called into doubt by the cumulative effects of ongoing victimization. Any protest by a group of individuals who are experiencing the democratic deficit is seen as further upsetting a plan to make public spaces more exclusive. Then, impostors and predators regard even the least severe offenders as seriously wrongdoing, which results in exaggerated responses from the judicial and political systems. Muslims or members of the OBC who commit crimes inflate their importance."³

Indian Legal Framework

Benoit Frydman has found two universal strategies that various countries employ to control hate speech. "The United States, which has a strong and persuasive First Amendment jurisprudence and whose threshold any type of restrictions on freedom of speech and expression fail to meet, is a good example of the slippery slope approach in action. A ban on hate speech would unquestionably contravene the First Amendment and be difficult to carry out."⁴

"India follows the latter strategy and forbids hate speech based on race, religion, ethnicity, or other factors. Most importantly and primarily the Indian Penal Code under Sections 153A, 153B, 295A, 298, 505(1) and 505(2) declares that word, spoken or written, or employing signs or any kind of visual representation that 'promotes disharmony, enmity, hatred or 'offends' or insults' on basis of religion, ethnicity, culture, language, region, caste, community, race is a punishable offence."⁵

However, instances of hate speech and related hate crimes have been steadily increasing. "Although the goal of hate speech legislation is to ideally prevent hate speech from ever occurring, they have only had a limited amount of effectiveness in controlling hate speech in the country. This prompts reflection on our laws and how they function, as well as the question of whether the proliferation of regulations has actually resulted in the overcriminalization of hate speech itself."⁶

Effective Response to Hate Speech

In India, the judicial system employs a variety of tactics to suppress hate speech. As we saw in the last section, the law largely forbids the use of particular types of hate speech. There are several different prison terms and fines associated with this crime.

The majority of these provisions are also not cognizable, not compoundable, and not bailable. As a result, the legal requirements are stringent and carry serious consequences. "Apart from that, hostile information is prohibited, censored, or causes the host website to be shut down depending on the medium of dissemination, such as print, television, or the internet. The criminal procedure statute gives the authorities the right to seize the item in question when it is printed."⁷

In spite of this mind boggling arrangement of regulations and guidelines, the quantity of hate speech arraignments is rising. As per certain sentiments, the justification for this development isn't the absence of implementation of the regulation, yet rather the inadequate manner by which it has been done.

³ Alam, I., Raina, R.L. and Siddiqui, F., 2016. Free vs hate speech on social media: the Indian perspective. *Journal of Information, Communication and Ethics in Society*.

⁴ Badjatiya, P., Gupta, S., Gupta, M. and Varma, V., 2017, April. Deep learning for hate speech detection in tweets. In *Proceedings of the 26th international conference on World Wide Web companion* (pp. 759-760).

⁵ Id.

⁶ Alam, I., Raina, R.L. and Siddiqui, F., 2016. Free vs hate speech on social media: the Indian perspective. *Journal of Information, Communication and Ethics in Society*.

⁷ Arun, C. and Nayak, N., 2016. Preliminary findings on online hate speech and the law in India. *Berkman Klein Center Research Publication*, (2016-19).

“However, considering the fine line that must be drawn between handling hate speech cases and providing justice to the people concerned, the question of whether the legal framework is sufficient to manage the challenges of regulating hate speech requires a response. Hate speech has a negative impact that is not just destructive but also extremely hazardous. The legal framework's explanation above has demonstrated that it only functions in a specific area.”⁸

It is basically impossible to fix the damage that hate speech causes to society, and there is no space for casualty recovery or different types of repayment. “In order to find an effective response to hate speech, it is imperative that we look beyond the strictures of criminal law. Two such strategies, which have shown considerable potential and functioned successfully in a few jurisdictions, are reviewed here.”⁹

Alternative Dispute Resolution for Cases Involving Hate Speech

A principal shift in the manner the legal framework conveys equity is proposed by elective question goal. It moves the accentuation from formal judicial actions that are court-focused to the goal of debates between parties through discussion, intercession, intervention, as well as mollification. “Given that it works in a time-bound manner and is focused on reaching a settlement between parties rather than pursuing the matter in a court of law, which is already overburdened with the load of cases pending for years and bound by procedural formalities, the importance of this approach for the resolution of disputes cannot be overemphasized.”¹⁰

In numerous nations all over the planet, an assortment of ADR strategies have been effectively utilized comparable to criminal issues, including "casualty guilty party intervention, casualty wrongdoer boards, casualty help programs, local area wrongdoing counteraction programs, local area administration, supplication haggling, and so on" Adopting elective techniques for taking care of criminal issues will significantly help the organization of law enforcement. Most importantly, it accomplishes the objective of helpful equity by offering casualties of wrongdoing a chance at casualty party compromise and beginning the mending and amends processes for the two parties.

Second, the elective question component can be modified to accomplish explicit goals while as yet working inside the boundaries set out by regulation. Thirdly, “it is a financially viable alternative for the parties because the expense borne by the parties is substantially lower than that of a formal trial. Fourth, the flexible process enables the parties to reach a resolution without having to endure the lengthy nature of certain court proceedings.”¹¹

However, the impediment is clear with regards to involving elective question goal techniques in criminal cases: this methodology can't be utilized predictably for all offenses. Its viability presently can't seem to be resolved viewing offenses that are delegated grave, serious, or grievous. While the utilization of different techniques to determine criminal cases has been full of vulnerability and applied to various levels of progress in India, the pattern overall is toward elective strategies with the courts filling in if all else fails.

Critical Analysis

The danger of isolating legislative issues in India has been aggravated by the shadow of exemption that the "bootleggers of hate speech" work in. They spread unadulterated hate speech unafraid of counter from the public authority or society. “One would have trusted that the popularity based organizations, laid out by the State and the constitution, would have the option to confine, while possibly not totally end, the attack of this forceful majoritarianism. Nonetheless, either through their bonus or oversight, these foundations have totally fizzled.”¹²

⁸ Yadav, A., 2018. Countering hate speech in India: Looking for answers beyond the Law. *ILI Law Review*, Winter Issue, 2.

⁹ Benesch, S., 2014. Defining and diminishing hate speech. *State of the world's minorities and indigenous peoples*, 2014, pp.18-25.

¹⁰ Id.

¹¹ Dowlagar, S. and Mamidi, R., 2021, December. A survey of recent neural network models on code-mixed indian hate speech data. In *Forum for Information Retrieval Evaluation* (pp. 67-74).

¹² Id.

There is nothing unexpected that there is no settlement on what comprises hate speech since it is a disagreeable subject. Nonetheless, there is a far and wide comprehension that hate speech is any correspondence that calls for brutality or bias against racial, strict, or ethnic gatherings. Three vital attributes of hate speech are distinguished by political researcher Bhikhu Parekh:

It is coordinated towards a specific, effectively unmistakable individual or, all the more much of the time, a gathering of people in light of an erratic, unessential quality of standards.

By inferring or altogether crediting to the objective gathering qualities that are generally viewed as exceptionally bothersome, it defames that gathering.

The objective gathering is seen as an undesirable presence and a reasonable objective of enmity in light of its troublesome qualities.

Hate speech is dangerous since it adds to institutional viciousness, and India's legislative issues of free speech include some type of fight for control. The standards against hate speech are much of the time used by the predominant class or strict gathering as an instrument for societal position declaration or to constrain others to regard their strict convictions. Indeed, even the legal executive has focused on "public request" over "free maxim" in these circumstances, which has aggravated the matter.

Thusly, these guidelines against hate speech really do safeguard strict sensibilities, however just for the socially and politically persuasive. In India, rejects hate speech serve more to safeguard power elites from moral damage than to propel the reason with the expectation of complimentary speech. The courts in India subsequently base their understanding of the guidelines against hate speech more on the possibility of the "commercial centre of shock" than the "commercial centre of thoughts."

Conclusion

Hate Speech guideline in a liberal majority rule state is a subject of philosophical and scholastic conversation. Any idea or assessment, regardless of how hostile, ought to be tested in the "commercial centre of thoughts" for reality to arise, as per the people who support the possibility that hate speech ought not be confined. Hate speech produces undeniably more damage than anything it indicates to guard or maintain, as per the individuals who accept it ought to be disallowed.

There are a few reasons for this issue. They incorporate subjectivity, conflicting use of the law, and ambiguity in the law. A short look at the legitimate foundation of these regulations uncovers that they have provincial starting points, and after freedom, India either embraced them in their unique structure or corrected them as and when fundamental. As such, albeit the regulations' careful language might have changed, their general plan to battle hate speech is as yet in light of a pilgrim perspective on Hindu-Muslim ties in India as well as the nation's way of life and society.